

Developing Conflict Resolution in Highway and Railway Projects in Finland – Perspective of Real Property Owners

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Key words: conflict, highway, railway, land management, real property owner

SUMMARY

This paper provides answers to the following question: what are the main objects of development in land management activities of highway and railway projects (route projects) when we look at these projects from the perspective of real property owners.

The results of the study show that the objects of development are associated with participation possibilities but also prevention and resolution of conflicts. Real property owners should have possibilities of participation in different functions of the adjustment phase, e.g. during the need analysis and the adjustment of private roads and parcels. The notification methods of preliminary and final engineering plans should be unified so that all real property owners are ensured possibilities of participation. Real property owners should also have a right to participate in the negotiations in which the method to compensation is formulated either as an agreement or a decision by an authority.

The right to compensation is not enough, however. Conflicts could be prevented by actions that support confidentiality and possibilities to negotiation and discussion. When properties are taken into possession, the owners should personally represent the properties that are expropriated. Legislation should be amended so that a decision by an authority posted to a real property owner should be enough in such cases in which the only object of the meeting is to present the real property owner with an expropriation decision and a document to appealing process.

Real property owners see route projects as entities. Therefore, the conflict resolution should be based on a holistic approach. If there are no possibilities to resolve a conflict in one function, the body that is responsible for this function should be obligated to hand the matter to another arena, for instance with mediation. This means there should be no more conflicts in such phases of the process that should not act as an arena of conflict management. In the future, use of different and new methods of conflict resolution in route projects in Finland should be promoted.

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1 INTRODUCTION

1.1 Background

Our society in Finland has changed in many ways during the last decades. It was not longer than a half a decade earlier when people mostly lived in rural areas and earned their living as small scale farmers. At the time, the education level in Finland was low. Those few individuals who lived in towns were working in factories and had rental flats. Nowadays most people live in towns and all Finns are highly educated. In addition, farms in rural areas have become large scale units. Nowadays most Finns own their flats and dwellings. These changes have led to a situation where people commonly – and real property owners especially – are more aware of their rights. People can also defend their rights better than before. (Kotilainen 2013, p. 4, Peltonen, Tuomisaari & Kanninen 2008, pp. 30–31.)

In this kind of an environment, real property owners may often be dissatisfied with actions of authorities. This dissatisfaction can lead to appeal processes, but not always. However, the dissatisfaction has impacts. It finds its way into discussions and actions in other arenas of the society. Dissatisfaction commonly decreases the efficiency of activities in our society.

1.2 Object of the study

Routes are an essential part of every society. Here the word “route” means both highways and railways. Good routes enable livelihood for all Finns. So we need them, but what about real property owner’s dissatisfaction concerning route projects? It is important to study it more closely. This study gives answers to the following research problem: *What are the institutional objects of development in a route project, i.e. how can we develop instructions, legislation and also traditional practices when we look at these activities from the perspective of a real property owner?*

(Kotilainen 2013, p. 4.)

Answers to the following three research questions are needed:

- 1) What kind of institutions are connected or could be connected with a route project when we study the project from the perspective of real property owners?
- 2) Which kinds of conflicts are found in route projects?
- 3) How do real property owners experience different actions in route projects?

(Kotilainen 2013, p. 5.)

The study focuses on essential activities of route projects. Research materials consist of research reports, legislation documents and other literary resources. During the study, interviews were carried out and empirical questionnaires were sent to real property owners. (Kotilainen 2013, pp. 14–15.)

2 CLASSIFICATIONS AND METHODS

2.1 Classifications

In this paper, the word “conflict” means a situation where the goals of real property owners and the goals of route authorities are contradictory. One can presume that the primary goal of a real property owner is to preserve his or her real property in that purpose of use in which it has been before the route project. If this purpose of use is threatened, the goals of the real property owner are contradictory to those of the route authorities – and a conflict is born. So the real property owner is conscious of these contradictory goals and dissatisfaction, but the route authorities are not necessarily aware of the situation. This means that the satisfaction or dissatisfaction of a real property owner is not dependant on whether or not the authority is aware of the situation. (Kotilainen 2013, p. 22.)

The word “institutions” in this context mean not only written regulations and instructions by route authorities and the National Land Survey of Finland but also traditional non-written practices and legislation. Furthermore, in this study organizations are regarded as institutions. (North 1991 pp. 97–102; 1993, pp. 3–10, Kotilainen 2013, p. 4.)

When we study institutions, we should notice that they need to provide such proceedings by which different kinds of conflicts can be resolved. Furthermore, institutions can contribute to the situation in such a way that the experiences of real property owners are positive and no conflicts appear. Respectively, institutions can also contribute to negative experiences. (North 1991 pp. 97–102; 1993, pp. 3–10, Kotilainen 2013, p. 4.)

In earlier studies, approaches have traditionally been such that the conflict situations in question have concerned monetary goals, compensations and controversies between different economic goals. This perspective is too narrow. The goals of individuals are different. They are not necessarily at all connected with either compensation matters or other monetary interests. (Kotilainen 2013, p. 8.)

In this study, experiences of real property owners are observed from the perspective of individuals. This means that this study shall present individual experiences of real property owners – not opinions of entire social communities. When the experiences of real property owners are presented, the opinions of authorities are kept in the background. (Kotilainen 2013, p. 7.)

Conflicts must first be classified. Because a route project is a project which changes the environment and the use of land, it is natural to use the same classification of conflicts which

is commonly used with environmental and land use planning matters. Based on this, conflicts were classified as conflicts of interest, value and knowledge. (Kotilainen 2013, p. 22.)

In a conflict of interests all parties try to control the same resources. The interest is often a monetary benefit, but it can also be a social, cultural or esthetic benefit. *A conflict of value* always concerns the basic values of an individual. This kind of a conflict is not easy to resolve because values are an essential part of an individual's identity. This means that we commonly cannot resolve these kinds of conflicts by bargaining or compromising. In this connection it is good to note that a conflict that concerns environmental issues is often a conflict of value. When we observe *a conflict of knowledge*, we can often see differences in the level of knowledge of parties. All parties do not necessarily have knowledge of every relevant fact. This can lead to misunderstandings. There can also be differences in people's perceptions of the world. In this situation, different people view the world differently. (Kotilainen 2013, p. 22.)

2.2 Methods

In the study, many different research methods and materials were used (Figure 1). Both quantitative and qualitative methods were used. Qualitative methods consisted of text analyses. (Kotilainen 2013, pp. 15–17.)

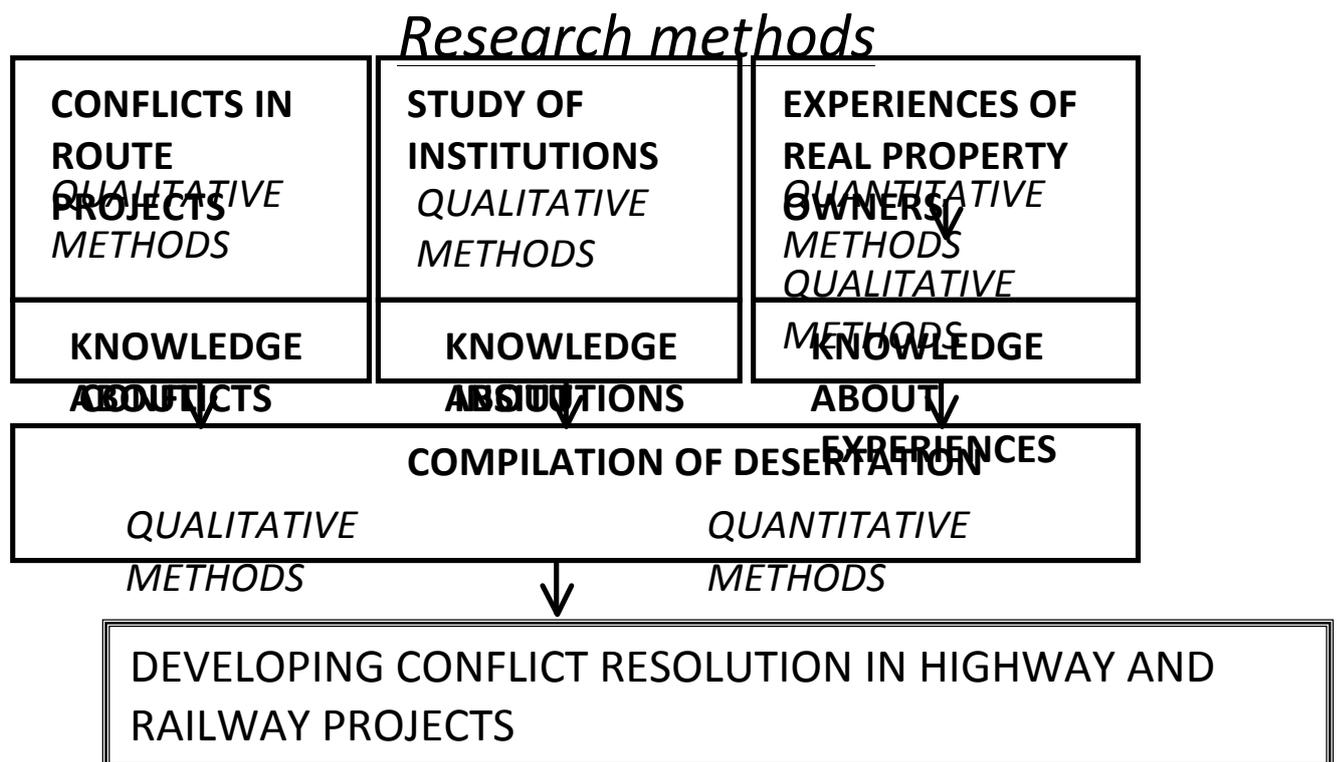


Figure 1. Research questions and methods in use (Kotilainen 2013, p. 16)

When institutions and conflicts were studied, qualitative methods were used. When we study conflicts between human beings, it is a matter of clarifying a phenomenon of experiences. It is a matter of reason and cause. In this study, the assumption was that some factors which commonly influence the experiences of human beings could be found. That is why two different methods were used in this study. That is also why the experiences were first studied with quantitative methods and after that with qualitative methods. The results are reliable due to the use of the combination of different methods. (Kotilainen 2013, pp. 15–17.)

3 RESULTS

3.1 Institutional frame

This part of the paper shall first give an overview of the institutional surroundings. Then it continues with more detailed institutional solutions.

The research results from the social operational environment of route projects show that this environment has been changing during the last few decades. There have been changes both in how the constitutional rights and the legislation are perceived and also in the proceedings the ways of organizing these proceedings. One trend is privatization of legal activities and actions; another is a growing importance of constitutional rights. Nowadays authorities should spontaneously and actively see to the realization of constitutional rights of individuals. In route projects this means for instance that the authorities must guarantee all participants a genuine right to participate in the route project from the beginning of the planning phase. (Kotilainen 2013, pp. 70–71.)

When we observe route projects and privatization, we see that nowadays routes are planned and constructed by private companies. Privatisation is commonly a reverse phenomenon to the growth of constitutional rights. But from the perspective of real property owners both trends have one common factor; they can function as an instrument in resolving conflicts. (Kotilainen 2013, p. 71.)

A route project can be divided into four main processes. It includes the activities of the adjustment (pre-study) and the planning phases, both of which are implementation phases – one focusing on land management activities and the other focusing on construction of the route. Strategic land banking activities are not a part of a route project, but they are nevertheless needed. (Figure 1) (Kotilainen 2013, pp. 11–13.)

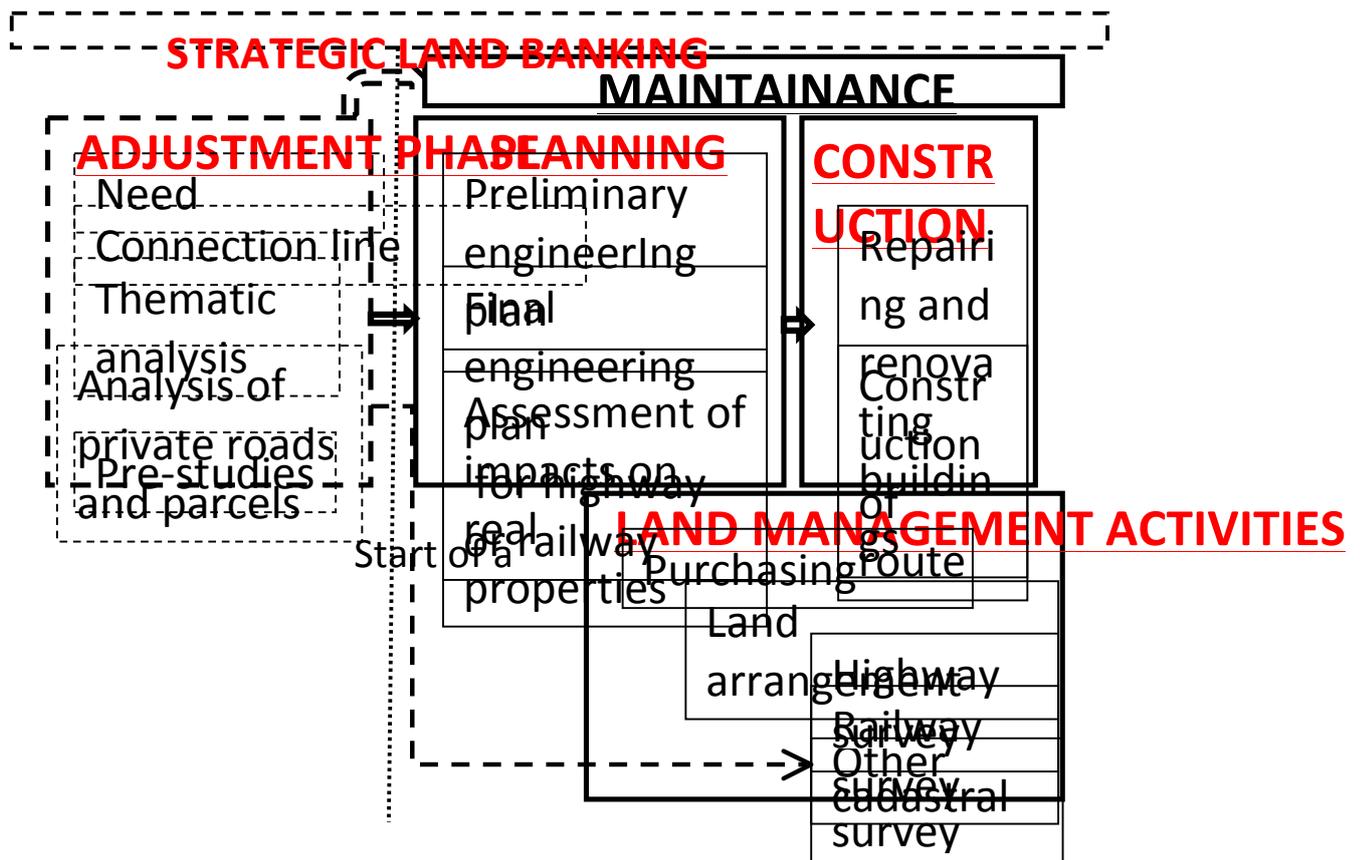


Figure 2. Route process - part of institutional frame (Kotilainen 2013, p. 12)

The first phase of a route project is adjustment. This phase includes many different activities often called technical studies. These included need analysis, a route section analysis a thematic analysis, an analysis of adjustment of private roads and parcels and other pre-studies. A part of the results of these analyses is used for maintenance; another part is for taking potential measures in a route project –. These procedures of the adjustment phase are not legal-based, but they are needed in practice. Contemporary, the activities of the planning phase – the second target – are based on legislation. This also means that the legislation regulates, that real property owners must be heard. The planning phase includes a preliminary engineering plan, a final engineering plan and an assessment of impacts on real properties. The third target, land management activities, includes purchases by agreement, land arrangements and also activities of expropriation of land (highway and railway surveys). There can be some other cadastral surveys involved, for instance concerning closing up private road junctions. In the study, there are also some observations that concern land banking and route building. (Kotilainen 2013, pp. 12–13.)

The procedures of a highway and railway survey and also legal proceedings (appeals) are regulated tightly by special laws. In the planning phase – contemporarily – only the communicative nature of the phase is regulated by law. The adjustment phase is not regulated at all, and the actions of the agreement procedure have minor regulations. On the other hand,

the Finnish Constitution and administrative legislation provide strong support to the basic rights of all individuals. One of these rights is the right to be heard, the other is the right to be able to influence issues that concern one's matters. (Kotilainen 2013, pp. 12–13.)

3.2 Conflicts and route projects

In every four main phases of a route project there can be conflicts of interest, value and knowledge. In the planning phase and in the cadastral survey phase, interest conflicts are connected with economic matters. Conflicts of value concern living conditions and the experienced quality of life of real property owners. A new route poses a threat to these matters. The practices by which the representatives of authorities act are also being discussed. Conflicts of knowledge could be minimized by giving property owners enough information and already in early stages of the project. When taking actions to expropriate possessions in a cadastral survey, good possibilities to discuss every loss and related matters should be provided. During cadastral surveys, real property owners highlight the poor measures of the construction phase. They say that with the measures taken to repair and renovate their buildings have many times been very poor. In addition, the surroundings of the constructed route have not always been finished. The surroundings are only “half ready” after the construction works has been completed. (Kotilainen 2013, p. 60, Kotilainen 2012, pp. 17–20.)

During planning phases, real property owners might describe conflicts which cannot be handled until in the cadastral surveys. Respectively in cadastral surveys they might talk about the conflicts that have come out in the early stage of the project, i.e. in planning. In these situations, this is not due to lack of information. It is due to the fact that real property owners see a route project as an entity. So they can talk about any of the conflicts during any phase of the route project. (Kotilainen 2013, p. 60, Kotilainen 2012, pp. 17–20.)

3.3 Experiences of real property owners

What about the modes of action from the perspective of real property owners? The research shows that real property owners are not always satisfied with the modes of action. Although only a few per cent of real property owners appeal against cadastral survey dissatisfaction is much more common. It concerns the planning phase but also the modes of actions used in agreement and construction procedures. (Kotilainen 2013, pp. 70–71.)

When we examine the construction phase, the issues of dissatisfaction are connected with the destruction measures and the preparation works. In addition, measures taken with private roads make real property owners dissatisfied. This means that there are lots of development possibilities in the construction activities. (Kotilainen 2013, pp. 44, 46–48.)

Real property owners assess the success of a route project as a whole, not on how the parts of the project have succeeded. These assessments are based on moral principles. In practice, this

means that real property owners prefer not only good results but also the social process, i.e. the measures that have been taken during the project. (Kotilainen 2013, p. 70.)

When we study these development possibilities from the viewpoint of conflict theories, we notice that the issues are theoretically associated with:

- safeguarding rights to participate
- prevention of conflicts and
- conflict resolution.

(Kotilainen 2013, p. 70.)

3.2 Main results and institutional objects of development

Figure 3 describes those actions in a route project which were objects on development proposals.

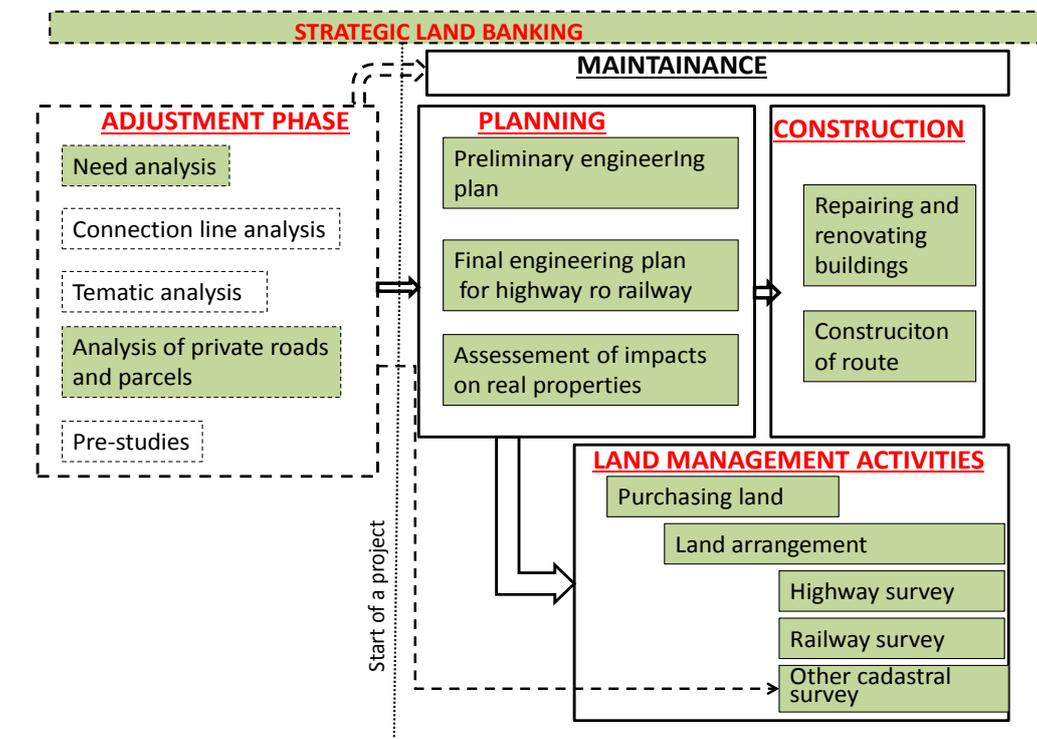


Figure 3. Objects of development (Kotilainen 2013, p. 51)

Rights to participation

During the adjustment phase, it is important to secure rights of participation for all real property owners. This phase is not legal-based. That is why it is particularly important that the modes of actions are good. In practice this means procedures where all real property owners can be invited to take part in the analysis stages that concern the real property owners' rights

to private roads or preliminary planning of readjustment of their land parcels. These stages commonly include the planning actions by which the authority later may close private road junctions. (Kotilainen 2013, pp. 51–52.)

Furthermore, the preliminary engineering and the final engineering phases need some standardising regarding the mode of actions. The aim is to secure that all real property owners have equal and genuine rights of participation. Furthermore, the method of notification is not allowed to be unequal. This means situations that concern planning phases or administrative actions that follow planning. The method of notification would be the same also for all real property owners regardless of where in the community they have their residence. Every real property owner should have a right to take part in discussions in which the method by which compensations are handled is formulated. This means either an agreement or an authority decision in a cadastral survey. (Kotilainen 2013, pp. 52–55.)

Prevention of conflicts

If we want to prevent conflicts, we should develop better administrative procedures, but also procedures which are taken into use when real property owners and authorities should come to an agreement. This means that we should add to confidentiality and to good possibilities to discuss and negotiate. When expropriating possessions in highway and railway surveys, there is a need for a mode of action by which it would be possible to evaluate losses together with real property owners. These kinds of measures promote finding of common knowledge ground that prevents conflicts. But it is unnecessary to always announce the decision of expropriation in a survey meeting. It does not prevent conflicts, i.e. because confidence in the authority is built much earlier—already at the beginning of the survey. An authority decision can be posted to real property owners as a written notification. But a cadastral surveyor has to have some possibility of consideration in every situation—whether to convene a meeting or not. (Kotilainen 2013, p. 71.)

Resolving of conflicts

The third object of development is to develop better procedures by which conflicts can be resolved. Especially the methods of conflict resolution used by authorities should be improved. This means that some of the procedures in planning phases, in cadastral surveys and construction phases should be changed. The main task is in negotiation activities. During cadastral surveys, there should be better mediation possibilities than there are today. (Kotilainen 2013, p. 71.)

Regarding serious conflict situations, these modes of action which authorities use today are not enough. These kind of serious situations are for instance personal conflicts that also include earlier disagreement. The object of the conflict can vary. Mediation is a good tool to solve these situations. The mediator can be an authority or an outsider. This means that mediation should be used in planning, cadastral survey and construction phases. A good way of action in mediation is a facilitative interest-based mediation. It begins so that the mediator first finds out the needs and aims of the parties which can vary greatly. After that the parties solve their problems with the help of the mediator. (Kotilainen 2013, p. 71.)

If there are no possibilities to resolve conflicts with the help of one function, the body that is responsible for this function should be obligated to hand the matter to another arena, for instance with mediation. This arena could be a negotiation or a mediation taking place outside the authority-based activities. If we use this mode of action, there would be no more conflict situations with any possibilities of solving the conflict. Of course, this does not always lead to a situation where all conflicts could be resolved. In practice, the above mentioned means that authorities should start to cooperate more closely. The aim of this would be to take the real property owners' perspective into consideration better than before. (Kotilainen 2013, p. 71.)

Real property owners see route projects as entities. Therefore, the conflict resolution should be based on a holistic approach. This means there should be no more conflicts occurring in such phases of the process that cannot provide a suitable arena for conflict management. In the future, the use of different and new methods of conflict resolution in route projects in Finland should be promoted. (Kotilainen 2013, p. 71.)

4 DISCUSSIONS

When we consider a route project in Finland, it is basically an administrative procedure. The Finnish Constitution and administrative regulations give real property owners a solid formal and legal position. A different issue is how real property owners experience their position in these route projects. This means that we need to study whether the goals of real property owners are achieved during these projects, and if this is the case, there have not been any conflicts or all the conflicts have been resolved. This is the goal to which this study has given some answers.

It needs to be mentioned that different real property owners have different institutional wishes on how land management activities should be handled and how conflicts should be resolved. Mainly, real property owners want that the administrative procedure sees to their basic rights and rights to participation better than before. They want that authorities are in charge and that a cadastral survey is the arena to order compensations. However, some real property owners prefer individual procedures. They want to agree on compensation matters themselves. If we look into this situation, we notice that the methods of conflict resolution should be more individual-based than before. The use of different methods should be increased, and the route and survey authorities should coordinate this development.

Authorities should cooperate to develop the route project processes from the perspective of real property owners. Some may say that it is too expensive to try to solve every conflict. It is true that costs may rise because an increase in resolving activities would require more personal encounters. On the other hand, good cooperation minimizes conflicts and appeals, which are also costly to handle. We can also consider the future. If real property owners are dissatisfied, this will influence the image of authorities negatively. It also increases inefficient actions in the whole society (Tyler 1990, pp. 161–169). This also has its price.

This paper points out that real property owners prefer a non-going social process during a route project. They appreciate multilateral and functioning cooperation between the parties involved. This can be threatened in the future if ICT-technology should take a direction where

real property owners no more can meet each other and the other parties of the project face-to-face in public and survey meetings. At the beginning of a route project, it is important to build confidence between all parties. This will become reality especially by personal meetings.

This study has observed many actions and procedures of a route project. The empirical parts of the study were carried out with the help of questionnaires. It may have been fruitful to make observations for instance in survey meetings. On the other hand, observation as a research method could have led to the study becoming too extensive.

More studies on the issue are needed in the future, e.g. what makes lay members of a cadastral survey prefer different conflict resolution methods. Do they believe that all these methods could be used when there are conflicts to be resolved in the survey? Another research target is connected with the “full compensation” principle. This possible future study should clarify the real reasons that make real property owners experience that the compensation is “full”. These reasons may be connected to something else than good compensation.

The starting point of this research has been the presumption that the duty of an authority in a route project is not only to solve legal issues and to decide the amounts of compensation but also to solve conflicts. In this way, the study highlights conflict resolution as a means to make the real property owner’s position in route projects stronger. The study widens traditional studies of land management in the direction of social science studies. Before this study, the main stream of the studies has been in techno-economical. This study shows that the research methods of social sciences should be used in the field of land management research also in the future.

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BIOGRAPHICAL NOTES

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